

IN THE COURT OF COMMON PLEAS OF MERCER COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

BONITA PERRY,  
Plaintiff

v.

COMMONWEALTH OF PENNSYLVANIA,  
PENNSYLVANIA STATE POLICE,  
Defendant

No. 2002-3679

FILED IN MERCER  
COUNTY  
2008 FEB -8 P 1:25  
ELIZABETH F. FAIR  
PROTHONOTARY

**MEMORANDUM OPINION AND ORDER**

This matter came before the court on defendant's Motion to Dismiss filed December 13, 2007 and argued before the court on February 4, 2008. Prior to oral argument, plaintiff filed a Notice of Appeal on January 9, 2008 from an Order dated December 7, 2007 which denied plaintiff's Motion for Leave to file an Amended Complaint and Motion to Supplement the Official Record pursuant to 42 Pa.C.S.A. § 5103. Ordinarily, the lower court loses jurisdiction once a case has been appealed. Pa.R.A.P. Rule 1701(a). However, Rule 1701(b)(6) directs lower courts to proceed "further in any matter in which a non-appealable interlocutory order has been entered, notwithstanding the filing of a notice of appeal . . . ."

The December 7, 2007 Order from which plaintiff appealed is not a final order, nor is it interlocutory. That order simply dismissed plaintiff's motion to amend a complaint and plaintiff's motion to supplement the record. Accordingly, plaintiff's appeal was premature and should be dismissed, and this court must proceed further pursuant to Rule 1701(b)(6).

Defendant's motion to dismiss this cause of action is based upon the plaintiff's failure to comply with the requirements of the statute permitting cases to be transferred from federal court to the various courts of common pleas in Pennsylvania. 42 Pa.C.S.A. § 5103(b). Plaintiff's case was originally filed in the United States District Court for the Western District of Pennsylvania on June 19, 2000 but was dismissed for lack of subject matter jurisdiction. Plaintiff then filed a Motion to Transfer on February 6, 2001 pursuant to 42 Pa.C.S.A. § 5103(b) which was filed in the Allegheny County Court of Common Pleas. Plaintiff simply attached certified copies of the federal docket sheet and the final order from the United States District Court dismissing the claims for lack of subject matter jurisdiction to her Motion to Transfer. Plaintiff then filed a motion in Allegheny County to transfer the case to Mercer County which was granted on November 18, 2002. The case was received by the Prothonotary of Mercer County from the Allegheny Court of Common Pleas on December 19, 2002. Plaintiff did not file, nor has she ever filed, certified copies of the federal pleadings in this matter.

Eventually, plaintiff desired to file an Amended Complaint and accordingly filed a Motion for Leave to File an Amended Complaint. At oral argument on that motion, plaintiff's counsel was advised by the court that there was no complaint transferred to the Mercer County Court of Common Pleas or subsequently filed by the plaintiff. Plaintiff then filed a Motion to Supplement the Official Court Record under the transfer statute and oral argument was held again which led to the December 7, 2007 Opinion and Order denying both motions. In order to resolve those motions, however, the court had to analyze the requirements of the transfer statute and concluded that the

plaintiff had not complied with the transfer requirements and accordingly denied plaintiff's motions. That opinion, of course, prompted the defendant to file its Motion to Dismiss which is currently pending before the court.

The analysis, discussion and rationale set forth in this court's Opinion attached to the December 7, 2007 Order is fully applicable to defendant's Motion to Dismiss and is thereby incorporated herein by reference. Accordingly, since plaintiff did not comply with the requirements set forth in the transfer statute in § 5103(b) in a prompt manner, by filing certified copies of the federal pleadings as required, defendant's Motion to Dismiss will be granted.

HENCE, THIS ORDER:

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Defendant

**ORDER**

AND NOW, on this 8<sup>th</sup> day of February, 2008, for the reasons set forth in the Opinion attached to the Order dated December 7, 2007, which is incorporated herein by reference, defendant's Motion to Dismiss is GRANTED pursuant to 42 Pa.C.S.A. § 5103.

BY THE COURT:

  
Christopher J. St. John, Judge

rmb

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